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IN THE

Supreme Court of the United States

October Term, ~~1952.~~ 1953

No. ~~535.~~ 13

POPE & TALBOT, INC.,
Petitioner,

v.

CHARLES HAWN

and

HAENN SHIP CEILING AND REFITTING CORPORATION.

BRIEF ON BEHALF OF CHARLES HAWN IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI.

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ARGUMENT.

The Third Question Alleged to Be Presented Is Moot and Is Therefore Not Appropriate for Review by This Court.

Petitioner requests this Court to review the judgment below upon three grounds (Questions Presented (Petition, pp. 6-7)). The present brief concerns itself solely with the third question presented. In thus restricting the scope of this brief, respondent Hawn does not intend to imply that the first two questions are appropriate for review by this Court. We merely refrain from commenting upon them at this stage of the proceedings.

Petitioner states the third question presented to be as follows:

> "Is the warranty of seaworthiness owing by a shipowner to employees of a stevedore under Seas

Shipping Company v. Sieracki, 328 U. S. 85, likewise owing by a shipowner to an employee of a carpentry contractor engaged in alterations and repairs to a vessel's fittings?" (Petition, pp. 6-7).

Our opposition to a review of this question is based upon the ground that the issue of unseaworthiness has become moot and, consequently, in the present posture of the case the question is not in fact presented to this Court.

This case was tried to a jury, which returned a special verdict in favor of respondent. The jury specifically found, in answers to certain interrogatories submitted to them, that (a) the S. S. "John Dickinson" was unseaworthy, and (b) the petitioner Pope & Talbot, Inc. was negligent (Rp 180a).[1] The Court of Appeals sustained both findings (Rh 59-60, 61), and, consequently, the judgment below rests upon both negligence and unseaworthiness. But the petitioner does not here attack the finding of negligence; it presents no question for review relating to that issue. The judgment below must therefore stand even assuming (though, of course, in no sense conceding) that it is not supportable on the finding of unseaworthiness.

We respectfully suggest, therefore, that the Petition for Certiorari does not in fact present to this Court any question relating to the issue of unseaworthiness, and, consequently, that question is not appropriate for review by this Court.

Respectfully submitted,

CHARLES LAKATOS,
Counsel for Respondent,
Charles Hawn.

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1. We are here following the mode of designating the record adopted by Petitioner (Petition, pp. 1-2, footnote).